

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____
Correction _____ **Substitute** _____

Date 4 February 2025
Bill No: HB 136-280

Sponsor: Andrea Reeb
Fentanyl Exposure as Child Abuse

Agency Name and Code Number: 280 Law Offices of the Public Defender [LOPD]

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **HB 107 (Penalty for Drug Trafficking & Death); SB 25 (Penalties for 1 KG Fentanyl); SB 95 (Fentanyl dealing with death as capital crime)**

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

HB 136 is similar to HB 106 and HB 221 introduced in the 2024 and 2023 legislative sessions, respectively.

Synopsis: HB 136 proposes to amend Subsection J of the child abuse statute, NMSA 1978, § 30-6-1, to include evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of fentanyl as establishing a prima facie case of child abuse.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

This bill proposes to create a presumption of guilt based on particular facts within the statutory definition of child abuse, which would theoretically result in more felony prosecutions. Analyst does not have access to data that would inform an estimate of how many new prosecutions this bill might generate, but anecdotally presumes that the number could be high.

If more trials result, LOPD may need to hire more trial attorneys with greater experience. Accurate prediction of the fiscal impact would be impossible to speculate. However an entry-level Assistant Trial Attorney’s mid-point salary including benefits is \$121,723.30 in Albuquerque/Santa Fe and \$130,212.59 in the outlying areas (due to salary differential required to maintain qualified employees). A mid-level felony capable Associate Trial Attorney’s mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas. A senior-level Trial attorney’s mid-point salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51.

SIGNIFICANT ISSUES

The existing statutory language “exposed to the use of” is unclear as to whether the presumption

of proof applies only if the child *uses* the drug or if it includes a child observing an adult using the drug. Certainly, the law should not presume criminal endangerment based merely on a child observing drug use. This unfortunate scenario is not the type of “endangerment” the criminal statute is designed to address, and is precisely the type of behavior that the *civil* child protective services are designed to address.

That said, assuming that the “prima facie” provision applies only if a child *themselves* consumes a drug, LOPD questions the need for this presumption, as the law is already quite clear that this would constitute endangerment. *See State v. Graham*, 2005-NMSC-004, ¶ 10, 137 N.M. 197 (child abuse conviction affirmed where the defendant left marijuana in areas accessible to children, including a potent marijuana bud in a baby’s crib). In *Graham*, the Supreme Court affirmed a child abuse conviction where marijuana, a controlled substance, had been left by the defendant in his house in locations where children had been playing just prior to its discovery and also in a baby’s crib. *See* 2005-NMSC-004, ¶¶ 10-12. That conviction did not require a “prima facie” proof provision because the specific facts of the case clearly established endangerment.

However, such convictions should be reserved for cases where the presence of a drug in the same space as a child actually creates “substantial foreseeable risk” of harm which is “reserved for the most serious occurrences, and not for minor or theoretical dangers.” *State v. Chavez*, 2009-NMSC-035, ¶¶ 16, 26, 146 N.M. 434. New Mexico law is also exceedingly clear that criminal child abuse convictions should be reserved for the most extreme cases of child abuse because the prosecution has “a broad array of civil remedies” and criminal sanctions for child abuse fall on “the far end of [the] spectrum” and are “reserved for the most serious occurrences.” *Id.* ¶¶ 12-16; *see also State v. Juan*, 2010-NMSC-041, ¶ 25, 148 N.M. 717 (noting that criminal punishment is).

This legislation takes away a jury’s independent assessment of often complex factual circumstances, and risks blurring the line between civil and criminal liability, such that even a drug user who is very careful to keep the drugs away from their children (but within the same household) could be criminally punished if the child nevertheless – against all odds – gains access. The culpability of criminal recklessness is supposed to focus on the parent’s level of precaution, not an unfortunate outcome.

PERFORMANCE IMPLICATIONS

See Fiscal Implications.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 107 (Penalty for Drug Trafficking & Death); SB 25 (Penalties for 1 KG Fentanyl); SB 95 (Fentanyl dealing with death as capital crime).

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

Unlike methamphetamine—the only other controlled substance included in Subsection J that can establish a prima facie case of child abuse when there is evidence that a child has been knowingly or intentionally exposed—pharmaceutical fentanyl is an opioid that can be prescribed by doctors to treat severe pain. *See Fentanyl Facts*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Feb. 26, 2025) <https://www.cdc.gov/stop-overdose/caring/fentanyl-facts.html>. Children can be prescribed fentanyl in various forms to treat moderate to severe pain resulting from acute and chronic pain symptoms as well as post-surgical pain. *See* Frederick T. O’Donnell, MD and Kathleen R. Rosen, MD, *Pediatric Pain Management: A Review*, 111 MO. MED. 231-237 (2014) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6179554/>. As written, HB 136 does not account for legitimate medical reasons that a child may be knowingly and intentionally exposed to fentanyl for pain management. This could theoretically result in charges of child abuse against parents, doctors, or pharmacists who facilitate a child’s medical use of fentanyl.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.